

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
JEREMY LEVIN AND DR. LUCILLE LEVIN,	:
	:
Plaintiffs,	:
	: Case No. 09-Civ-5900 (RPP)
v.	:
	:
BANK OF NEW YORK, <i>et al.</i> ,	:
	:
Defendants.	:
-----X	
THE BANK OF NEW YORK MELLON, <i>et al.</i>	:
	:
Third-Party Plaintiffs,	:
	:
v.	:
	:
ESTATE OF MICHAEL HEISER, <i>et al.</i> ,	:
	:
Third-Party Defendants.	:
-----X	

**LIMITED RESPONSE OF THE ESTATE OF MICHAEL HEISER, ET AL.  
TO PLAINTIFFS' MOTION FOR A STAY OF THE COURT'S  
JANUARY 28, 2011 ORDER PENDING APPEAL**

The Estate of Michael Heiser, *et al.* (the "Heisers") by their undersigned counsel, hereby submit the following limited response to the Motion of Jeremy Levin and Dr. Lucille Levin (collectively, the "Levins") for a stay of the Court's January 28, 2011 Order Pending Appeal (the "Motion"). The Heisers do not take a position with respect to the Levins' request for a stay of the Court's January 28, 2011 Order (the "Order"), provided that the stay is limited in scope to the relief requested in the Motion, *i.e.*, a stay of the portion of the Order ordering the immediate payment of the Phase 1 Assets (as defined in the Order) held by JPMorgan Chase Bank, N.A. ("JPMorgan") and Citibank, N.A. ("Citibank") to the Greenbaum and Acosta Judgment Creditors.

However, the Heisers do object to the extent that the Levins seek a stay of the entire proceeding. The portions of the January 28, 2011 Opinion addressing the Heisers' Motion for Summary Judgment and the Heisers' claims to various assets in these proceedings, exclusive of any claim to the Phase One Assets<sup>1</sup> held at Citibank and JPMorgan which the Court ordered to be turned over to the Greenbaum and Acosta Judgment Creditors, are not final or properly appealable at this time. As such, any stay granted in favor of the Levins should not affect the Heisers and their claims in this case. To the extent that the Levins seek to stay the Heisers from proceeding in this case on their claims, the Heisers object due to the fact that the Heisers rights and claims are not final and should not be subject to an immediate appeal or a stay.

Accordingly, any stay should be limited to the implementation of the Order as it relates to the Phase 1 Assets held by JPMorgan and Citibank.

---

<sup>1</sup> The term "Phase One Assets" has the meaning ascribed to it in the Order.  
EAST\44281129.1

Dated: New York, New York  
February 24, 2011

\_\_\_\_\_/s/  
Cary B. Samowitz  
Barbara L. Seniawski  
DLA Piper LLP (US)  
1251 Avenue of the Americas, 27th Floor  
New York, New York 10020-1104  
Telephone: 212-335-4500  
Facsimile: 212-884-4501  
cary.samowitz@dlapiper.com  
barbara.seniawski@dlapiper.com

and

Richard M. Kremen (Md. Fed. Bar No. 00532)  
Dale K. Cathell (Md. Fed. Bar No. 26924)  
David B. Misler (Md. Fed. Bar No. 28828)  
DLA Piper LLP (US)  
6225 Smith Ave.  
Baltimore, MD 21209  
Telephone: 410-580-3000  
Facsimile: 410-580-3001  
richard.kremen@dlapiper.com  
dale.cathell@dlapiper.com  
david.misler@dlapiper.com

*Attorneys for Third-Party Defendants Estate of  
Michael Heiser, et al.*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JEREMY LEVIN AND DR. LUCILLE LEVIN, :

Plaintiffs, :

v. :

BANK OF NEW YORK, *et al.*, :

Defendants. :

: Case No. 09-Civ-5900 (RPP)

-----X  
THE BANK OF NEW YORK MELLON, *et al.* :

Third-Party Plaintiffs, :

v. :

ESTATE OF MICHAEL HEISER, *et al.*, :

Third-Party Defendants. :

**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

I, David B. Misler, Esq., an attorney admitted to practice before this Court, pro hac vice, under penalty of perjury, certify that on the 24th day of February, 2011, true and correct copies of the following documents were provided to the persons listed in the attached Service List, by the Court's CM/ECF electronic filing notification:

(1) Limited Response of the Estate of Michael Heiser, *et al.* to the Plaintiffs' Motion for a stay of the Court's January 28, 2011 Order Pending Appeal.

Dated: Baltimore, Maryland  
February 24, 2011

\_\_\_\_\_  
/s/  
David B. Misler  
DLA Piper LLP (US)  
6225 Smith Avenue  
Baltimore, MD 21209  
Telephone: 410-580-3000  
Facsimile: 410-580-3047  
david.misler@dlapiper.com

*Attorneys for Third-Party Defendants Estate of  
Michael Heiser, et al.*

**SERVICE LIST**

Don Howarth  
Suzelle M. Smith  
Kathryn Lee Crawford  
Howarth and Smith (LA)  
523 West Sixth Street, Suite 728  
Los Angeles , CA 90014  
nkhoury@howarth-smith.com  
ssmith@howarth-smith.com

Howard B. Levi  
J. Kelley Nevling , Jr  
Levi Lubarsky & Feigenbaum LLP  
1185 Avenue of the Americas  
17th Floor  
New York , NY 10036  
hlevi@llf-law.com  
knevling@llf-law.com

Jeffrey Lance Nagel  
Terry Alan Myers  
Gibbons P.C. (NY)  
One Pennsylvania Plaza, 37th Floor  
New York , NY 10119  
tmyers@gibbonslaw.com  
ckaplan@gibbonslaw.com  
jnagel@gibbonslaw.com  
lduignan@gibbonslaw.com  
psaso@gibbonslaw.com

Liviu Vogel  
Salon Marrow Dyckman Newman Broudy LLP  
292 Madison Ave, 6th floor  
New York , NY 10017  
lvogel@salonmarrow.com

Mark Hanchet  
Christopher James Hought  
Mayer Brown LLP  
1675 Broadway  
New York , NY 10019  
mhanchet@mayerbrown.com  
jmarsala@mayerbrown.com  
chought@mayerbrown.com

Robert Joseph Tolchin  
Robert J. Tolchin, Esq.,  
225 Broadway  
24th Floor  
New York , NY 10007  
Rjt@tolchinlaw.com

Jonathan G. Kortmansky  
Sullivan & Worcester LLP  
1290 Avenue of the Americas  
New York , NY 10104  
jkortmansky@sandw.com  
mstein@sandw.com  
rlombardo@sandw.com  
fvelie@sandw.com

George F. Hritz  
Hogan & Hartson LLP  
875 Third Avenue  
New York , NY 10022  
George.hritz@hoganlovells.com  
Marie.ferrara@hoganlovells.com  
Tu.nguyen@hoganlovells.com

John Joseph Hay  
Salans  
620 Fifth Avenue  
New York , NY 10020  
jhay@salans.com  
cblackwell@salans.com  
dgerlach@salans.com  
apabona@salans.com

George Michael Chalos  
Kerri Marie D'Ambrosio  
Chalos & Co., P.C.  
123 South Street  
Oyster Bay , NY 11771  
gmc@chaloslaw.com

Sharon L. Schneier, Esq.  
Christopher J. Robinson  
Davis, Wright, Tremaine, LLP  
1633 Broadway  
27th Floor  
New York, NY 10019-6708  
sharonschneier@dwt.com  
meganduffy@dwt.com  
chrisrobinson@dwt.com

Curtis Campbell Mechling  
Jeremy Sage Rosof  
Stroock & Stroock & Lavan LLP  
180 Maiden Lane  
New York , NY 10038  
cmechling@stroock.com  
jrosof@stroock.com

Noel J. Nudelman  
Heideman Nudelman and Kalik, PC  
1146 19TH STREET, NW  
5th Floor  
Washington, DC 20036  
njnudelman@hnklaw.com  
trkalik@hnklaw.com

Bruce D. Oakley  
Dennis H. Tracey, III  
Hogan Lovells LLP  
875 Third Avenue  
New York, New York 10022  
bruce.oakley@hoganlovells.com  
dennis.tracey@hoganlovells.com